

**A Datuk David Teng Lung Chi v Chiew Chin Sing,
The Secretary of DAP Sarawak (being sued on behalf
of DAP Sarawak) & Anor and another appeal**

**B HIGH COURT (SIBU) — SUIT NO 20-22-40 OF 1996 CONSOLIDATED
WITH SUIT NO 20-22-41 OF 1996
TEE AH SING J
5 DECEMBER 1997**

**C *Civil Procedure — Pleadings — Amendment of defence — Amendment to add
defence of justification — Whether proposed amendments were for the purpose of enabling
the court to adjudicate and determine on all matters and issues in controversy between the
parties — Whether amendments were a tactical manoeuvre in an attempt to defeat and/
or delay the plaintiff's application to strike out certain paragraphs of the defence —
Whether defendant should be precluded from amending defence when the action had not
been fixed for trial***

**D The defendants were sued for libel and had duly filed a defence. The
defendants thereafter applied by way of summons in chambers for
leave to be granted to amend certain paragraphs, ie 14A and 14B of
the statement of defence annexed to the summons in chambers. The
amendments were, in essence, to add a plea of justification. In an
affidavit in support of the application for amendment, it was conceded
**E by the defendants that at first it was thought the line of defence was
unnecessary but now the defendants felt it necessary to be included
in order for the controversy between the parties to be determined. At
the date of the hearing, counsel for the defendants also made a
further oral application to amend para 13 of the defence and to add
a new paragraph, para 14AA after para 14A. The proposed
amendments were strongly objected to by the plaintiff who contended
that the said applications were mere attempts to defeat and/or delay
the plaintiff's application to strike out certain paragraphs of the
defence. It was further argued that the proposed amendments were
made in bad faith and not bona fide. Similar amendments were also
sought in Suit No 20-22-41-96. The parties also agreed that Suit
Nos 20-22-42-96, 20-22-43-1996 and 20-22-45 would abide by
the decision in this case.****

Held, allowing the amendments:

**H (1) It is trite law that an amendment which would enable the real
issues between the parties to be tried ought to be allowed subject
to the penalties on costs and adjournments, if necessary, unless
the amendment would cause injustice or injury to the opposing
party which could not be compensated by costs or otherwise. In
this case, the defendants' proposed amendment was for the
purpose of enabling the court to adjudicate and determine on all
matters and issues in controversy between the parties. The
proposed amendments were not a tactical manoeuvre in an
attempt to defeat and/or delay the plaintiff's application to strike
out certain paragraphs of the defence. Whatever the reasons may**

I

be as to why the plea of justification was not included in the defence in the first place, and even assuming it was due to an oversight or negligence or error of judgment, that should not preclude the defendants from pleading it now, when the action had not been fixed for trial (see pp 592F, H-I and 593A); *Cropper v Smith* (1884) 26 Ch D 700; *Tildesley v Harper* (1878) 10 Ch D 393 and *Clarapede & Co v Commercial Union Association* (1883) 32 WR 262 followed.

- (2) The proposed amendments in paras 13, 14A, 14AA and 14B arose out of the same facts or substantially the same facts as had been pleaded in the defence. These amendments would not cause any prejudice to the plaintiff which could not be compensated in money. No prejudice which cannot be compensated by costs had been shown. Thus, the application for leave to amend the proposed defence in paras 13, 14A, 14AA and 14B of the defence was allowed (see p 596C-D, F).

Obiter:

Even assuming limitation applied, the proposed amendments would be allowed as the court had power to grant an amendment after the expiry of limitation on the condition that the new cause of action must arise out of the same or substantially the same facts as the cause of action in respect of which the relief had already been claimed (see p 596D-E); *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230 followed.

[Bahasa Malaysia summary]

Defendan-defendan telah didakwa untuk libel dan telah memfailkan pembelaan seperti yang sepatutnya. Selepas itu, defendan-defendan memohon melalui saman dalam kamar agar kebenaran diberikan untuk meminda perenggan tertentu, iaitu 14A dan 14B pernyataan pembelaan yang dilampirkan kepada saman dalam kamar. Sebagai dasarnya, pindaan adalah untuk menambahkan hujah justifikasi. Dalam satu affidavit menyokong permohonan untuk pindaan, ia telah diakui oleh defendan-defendan bahawa pada mulanya ia difikirkan bahawa baris pembelaan itu tidak perlu tetapi kini defendan-defendan berasa adalah perlu untuk dimasukkan supaya kontroversi di antara pihak-pihak boleh ditentukan. Pada tarikh pembicaraan, peguam defendan-defendan juga membuat permohonan lisan yang lanjut untuk meminda perenggan 13 pembelaan dan untuk menambahkan satu perenggan baru, perenggan 14AA selepas perenggan 14A. Pindaan yang dicadangkan dibantah dengan tegasnya oleh plaintiff yang berhujah bahawa permohonan tersebut cumalah percubaan untuk menewaskan dan/atau untuk menangguhkan permohonan plaintiff untuk membatalkan perenggan tertentu pembelaan. Ia seterusnya diujahkan bahawa pindaan yang dicadangkan telah dibuat dengan tidak suci hati dan bukan bona fide. Pindaan yang serupa juga diminta dalam Guaman No 20-22-41-96. Pihak-pihak juga

A bersetuju bahawa Guaman No 20-22-42-96, 20-22-43-1996 dan
20-22-45 akan mematuhi keputusan dalam kes ini.

Diputuskan, membenarkan pindaan-pindaan:

- B (1) Adalah undang-undang mantap bahawa suatu pindaan yang akan
membolehkan isu sebenar di antara pihak-pihak dibicarakan patut
dibenarkan tertakluk kepada penalti atas kos dan penangguhan,
jika perlu, melainkan pindaan akan menyebabkan ketidakadilan
atau kerosakan kepada pihak bertentangan yang tidak boleh
dipampas dengan kos atau sebaliknya. Dalam kes ini, pindaan
C yang dicadangkan oleh defendan-defendan adalah untuk tujuan
membolehkan mahkamah menghukum dan menentukan segala
perkara dan isu dalam kontroversi di antara pihak-pihak. Pindaan
yang dicadangkan bukanlah muslihat taktik dalam percubaan
untuk menewaskan dan/atau menangguhkan permohonan plaintif
untuk membatalkan perenggan tertentu pembelaan. Biar apa
D pun alasan tentang mengapa hujah justifikasi tidak termasuk
dalam pembelaan pada mulanya, dan sekalipun menganggap ia
disebabkan kesilapan atau kecuaiian atau kesilapan penghakiman,
ini tidak patut menghalang defendan-defendan daripada
menghujahkannya sekarang, apabila tindakan belum ditetapkan
untuk perbicaraan (lihat ms 592F, H-I dan 593A); *Cropper v*
E *Smith* (1884) 26 Ch D 700; *Tildesley v Harper* (1878) 10 Ch D
393 dan *Clarapede & Co v Commercial Union Association* (1883)
32 WR 262 diikuti.
- F (2) Pindaan yang dicadangkan dalam perenggan-perenggan 13, 14A,
14AA dan 14B timbul daripada fakta yang sama atau pada
dasarnya fakta yang sama seperti yang diplidkan dalam pembelaan.
Pindaan-pindaan ini tidak akan menyebabkan sebarang
kemudaran kepada plaintif yang tidak boleh dipampas dengan
wang. Tiada kemudaran yang tidak boleh dipampas dengan
kos telah ditunjukkan. Justeru itu, permohonan untuk kebenaran
meminda pembelaan yang dicadangkan dalam perenggan-
G perenggan 13, 14A, 14AA dan 14B pembelaan dibenarkan (lihat
ms 596C-D, F).

Obiter:

- H Sekalipun menganggap had masa terpakai, pindaan yang dicadangkan
akan dibenarkan kerana mahkamah mempunyai kuasa untuk
membenarkan pindaan selepas tamatnya had masa dengan syarat
bahawa kausa tindakan yang baru mestilah timbul daripada fakta
yang sama atau pada dasarnya fakta yang sama seperti kausa tindakan
berkenaan yang mana relief telah dituntut (lihat ms 596D-E); *Hock*
I *Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230 diikuti.]

Notes

For cases on amendment of defence, see 2 *Mallal's Digest* (4th Ed,
1994 Reissue) paras 217-224 and 2527-2532.

Cases referred to

Associated Leisure Ltd & Ors v Associated Newspapers Ltd [1970] 2 All ER 754 (refd) A

Clarapade & Co v Commercial Union Association (1883) 32 WR 262 (folld)

Cropper v Smith (1884) 26 Ch D 700 (folld)

Hock Hua Bank Bhd v Leong Yew Chin [1987] 1 MLJ 230 (refd) B

Lee Kuan Yew v Devan Nair [1990] 3 MLJ 452 (refd)

Lucas-Box v News Group Newspapers Ltd [1986] 1 All ER 178 (refd)

Maisel v Financial Times Ltd (No 1) (1915) 84 LJKB 2145 (refd)

Prager v Times Newspapers Ltd [1988] 1 All ER 300 (refd)

Tildesley v Harper (1878-79) 10 Ch D 393 (folld) C

Legislation referred to

Rules of the High Court 1980 O 20 r 5

Stephen Chung (Stephen Robert & Wong Advocates) for the plaintiffs/ respondents. D

Wong Ho Leng (Wong Ho Leng & Co) for the defendants/applicants.

Cur Adv Vult

Tee Ah Sing J: Before the submission began, both parties agreed that Suit Nos 20-22-40-96 and 20-22-41-96 were to be heard together and the other four suits, namely, Suit Nos 20-22-42-96, 20-22-43-96, 20-22-44-96 and 20-22-45-96 were to abide by the decision in both these two cases. E

In Suit No 20-22-40-96, there is an application by summons in chambers under O 20 r 5 of the Rules of the High Court 1980 ('the RHC') by the defendants that leave be granted to the defendants to amend the statement of defence. The proposed amendments are underlined in red. They are in paras 14A and 14B. In Suit No 20-22-41-96, the proposed amendments are in paras 16A and 16B. F

The application is supported by the affidavit of Chew Chin Sing affirmed on 18 August 1997. The relevant parts of the affidavit read as follows: G

- 1 I am the Deputy Chairman of the Democratic Action Party ('the DAP'), Sarawak. I depose to the facts herein on behalf of the DAP. Wong Kee Liong, the sole proprietor of the second defendant, has also authorized me to depose to the facts herein. The facts deposed by me herein are true and are within my own knowledge, information and belief, save where otherwise stated. H
- 2 I crave to refer to the defence filed by the defendants herein dated 4 February 1997. The defendants are applying to the Honourable Court for leave to amend the said defence in the manner underlined in red in the proposed amended defence annexed to the present application. I
- 3 Essentially, the proposed amendment seeks to include the plea of justification as one of the defences.

- A 4 I have been told by the defendants' solicitor, Mr Wong Ho Leng, that the plea of justification had not been included in the defence earlier because it was thought that the said line of defence was not necessary.
- 5 However, I have since been advised by my solicitor that the plea of justification is necessary in order that the issues in controversy between the parties herein may be determined. Hence, this application to include the said plea.
- B 6 I have also been advised by my solicitor that the application and the amendment is bona fide; and/or would not turn the suit from one character into a suit of another and inconsistent character.
- 7 I have also been advised that the amendment arises out of the same facts or substantially the same facts as pleaded in the defence filed in this court, and that the plaintiff will not suffer any injustice which cannot be compensated by an order as to costs.
- C

An affidavit in opposition was affirmed by Datuk David Teng Lung Chi ('the plaintiff') on 30 August 1997. The relevant parts of the affidavit reads as follows:

- D 3 The defendants have by this summons in chambers applied to amend the defence dated 4 February 1997 to include the plea of justification as one of the defences.
- 4 I honestly and verily believe that this application to amend is not bona fide but a tactical manoeuvre on the part of the defendants in order to attempt to defeat and/or delay my summons in chambers application dated 20 May 1997 to strike out certain paragraphs of the defendants' defence.
- E 5 By the plaintiff's said summons in chambers application I applied inter alia to strike out paras 13 and 14 of the defence. In para 8 of my affidavit affirmed on 7 May 1997, I categorically said that the defendants have not pleaded justification in their defence and that none of the defamatory statements of facts and other allegations contained in the pamphlet are true.
- F 6 My summons in chambers application was fixed for hearing on 30 June 1997 but was adjourned on the defendants' application to 20 August 1997. The defendants then filed this summons in chambers application to amend the defence on 18 August 1997 in an attempt to improve their case in my striking out application. The defendants' application was filed at the eleventh hour in order to force another adjournment to try and delay my application.
- G 7 Therefore I verily believe that the defendants' application to amend at this stage of the proceedings is not bona fide and made in bad faith. The defendants have already stated that it was not necessary to plead justification and I am surprised that they now consider it necessary to plead justification. No reason whatsoever has been given by the defendants as to why it should now become necessary to plead justification.
- H 8 It is to be noted that the particulars contained in para 14A of the proposed amendments are the same as the particulars contained in para 13 of the defence which I have already applied to strike out.
- I 9 The particulars contained in the proposed para 14A specifically referred to and made allegations against Tan Sri Datuk Amar Dr Wong Soon

Kai. I verily believe these allegations are false and are themselves highly defamatory. These allegations bear no relation or connection whatsoever to me. They are irrelevant and embarrassing as I am uncertain how to reply to the proposed amendments which do not concern me.

- 10 I am also advised and verily believe that the allegations contained in the proposed amendments are not relevant nor material to the contents of the pamphlet which concerns Lot 1395 Seduan Land District. The sting of the libel lies in the allegations that I together with others had used and abused my office position and influence as a politician and a member of the Dewan Undangan Negeri Sarawak and an Assistant Minister to procure preferential treatment for myself in relation to Lot 1395 Seduan Land District. The particulars in the proposed para 14A are not relevant to the words complained of contained in the pamphlet.
- 11 The defendants must clearly confine such particulars to those relevant to the issues on the pleadings. The alleged particulars, even if proved to be true at the trial, cannot conceivably have any bearing on the libel at all.
- 12 The proposed amendments would tend to prejudice and delay the fair trial of my claim in this action. In the premises, I pray that the defendants' application to amend be dismissed with costs.

Learned counsel for the defendants made an oral application to amend para 13 of the defence in Suit No 20-22-40-96 to change the full stop in the first sentence to a comma and to add the following 'on, of or concerning politicians and leaders of the SUPP, of which the plaintiff is one, including their speeches, acts and deeds while holding offices in their party and/or government which would show that they have acted or are capable of having acted in the manner alleged in the said pamphlet'. The other amendment is to add a new para 14AA after 14A as follows:

The defendants will say that the particulars provided in para 14A show and/or would show that politicians and leaders of the SUPP, of which the plaintiff is one, have, while holding offices in their party and/or government, acted or are capable of having acted in the manner alleged in the said pamphlet and/or have otherwise acted in the manner pleaded in para 8 of the statement of claim.

Learned counsel for the defendants also made an oral application to amend para 15 of the defence in Suit No 20-22-41-96 to change the full stop in the first sentence to a comma and to add the following 'on, of or concerning politicians and leaders of the SUPP, of which the first plaintiff is one, including their speeches, acts and deeds while holding offices in their party and/or government, which would show that they have acted or are capable of having acted in the manner alleged in the said pamphlet'. And orally applied to add a new para 16AA as follows:

The defendants will say that the particulars provided in para 16A show and/or would show that politicians and leaders of the SUPP, of which the plaintiff is one, have, while holding offices in their party and/or government, acted or are capable of having acted in the manner alleged in the said pamphlet and/or have otherwise acted in the manner pleaded in para 9 of the statement of claim.

A I have considered the submissions of both learned counsel for the plaintiff and the defendants. I shall now deal with the issues raised.

The principles whether an application for amendment of pleading should be allowed or not are set out in the case of *Associated Leisure Ltd & Ors v Associated Newspapers Ltd* [1970] 2 All ER 754. At p 757, Lord

B Denning MR stated as follows:

I start with the principle, well settled, that an amendment ought to be allowed, even if it comes late, if it is necessary to do justice between the parties, so long as any hardship done thereby can be compensated in money. That principle applies here. I think that justice requires that the matters alleged in this amendment should be investigated in a court of law.

C It would, I think, be very strange if this libel action were to be tried next month and damages awarded on the basis that there was nothing whatsoever to be said against the plaintiffs; and yet, in October, the Gaming Board were to refuse them a certificate on the ground that they were not fit and proper persons to supply and sell gaming machines. It is in the interests of consistency and justice that the reputation and character of the plaintiffs should be properly considered in this action, provided always, as I have said, that any hardship to the plaintiffs can be compensated for in money. I think it can so be compensated. The defendants, in putting this plea of justification on the record, run a very grave risk. If it fails, the damages which might otherwise have been modest, would now be colossal.

E And at pp 758–759, Edmund Davies LJ stated as follows:

These courts are here to administer justice. The concept of justice is not confined to the interests of the particular litigants; it embraces and extends to the protection of the public weal. The issues involved in this litigation have an importance of direct concern to the community. The defendants rightly accept that by the words complained of here they make grave charges. They also accept that their application for leave drastically to amend their defence is very belatedly made. So it is. Even so, should it be granted?

The all-embracing principle applicable to such a case as the present was enunciated by Bowen LJ in *Cropper v Smith* (1884) 26 Ch D 700 at pp 710–711 in classic words:

G ‘... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.’

I To that approach all other considerations must be subordinate. Applying it here, the machinery of the law having been set in motion by the institution of these proceedings, the real issues involved are of great importance to the community, and it is in the public interest that they should be properly ventilated notwithstanding the delay which will in consequence arise in bringing the matter to trial.

In para 4 of the affidavit of Chew Chin Sing, it is averred as follows: A

I have been told by the defendants' solicitor, Mr Wong Ho Leng, that the plea of justification had not been included in the defence earlier because it was thought that the said line of defence was not necessary.

Counsel's advice might have been right or wrong at that stage. However, in para 5 of Chew Chiu Sing's affidavit, it is averred as follows: B

However, I have since been advised by my solicitor that the plea of justification is necessary in order that the issues in controversy between the parties herein may be determined. Hence, this application to include the said plea.

So the advice of counsel was that the plea of justification was necessary in order that all the issues in controversy between the parties may be determined. C

Even though the defendants' solicitor had blundered in not pleading the plea of justification earlier, that blunder was neither fraudulent nor intended to overreach in the sense referred to by Bowen LJ in the passage from his judgment in *Cropper v Smith* (1884) 26 Ch D 700 at pp 710-711 which I have already quoted. D

The defence was filed on 4 February 1997. The summons in chambers to amend the defence was filed on 18 August 1997. However, the case has not been set down for trial. I am of the view that the delay of about 6½ months was not ordinate. E

It is trite law that an amendment which would enable the real issues between the parties to be tried should be allowed subject to penalties on costs and adjournment, if necessary, unless the amendment would cause injustice or injury to the opposing party which could not be compensated by costs or otherwise: see *Cropper v Smith*, *Tildesley v Harper* (1878-79) 10 Ch D 393. This is even though the omission was caused by carelessness or the application for amendment was made very late in the day: per Brett MR in *Clarapede & Co v Commercial Union Association* (1883) 32 WR 262 at p 263. F

The plaintiff's application vide summons in chambers dated 20 May 1997 seeks to strike out certain paragraphs pertaining to, inter alia, defence on fair comment. G

The plea of justification raised in the proposed paras 14A, 14AA and 14B is a separate and distinct defence.

I am of the view that the proposed amendment is for the purpose of enabling the court to adjudicate and determine on all matters and issues in controversy between the parties. As such, I am of the view that the proposed amendment was not a tactical manoeuvre in order to attempt to defeat and/or delay the plaintiff's summons in chambers dated 20 May 1997 to strike out certain paragraphs of the defence. H

On the principles established in *Cropper v Smith*, *Tildesley v Harper* and *Clarapede & Co v Commercial Union Association*, it seems to me that whatever may be the reason why the plea of justification was not included I

- A in the defence in the first place, and even assuming that it was due to an oversight or negligence or error of judgment, that should not preclude the defendants from pleading it now, when the action has not been fixed for trial.

Paragraph 8 of the statement of claim reads as follows:

- B 8 The said words in their natural and ordinary meaning meant and were understood to mean in reference to the plaintiff:
- (a) that he had used and abused his office position and influence as a politician and Assistant Minister for Environment and Housing to get a parcel of land — which is registered, inter alia, in his name as to ¹⁰⁰/₁₉₄₈ ths shares thereof and described as Lot 1395 Seduan Land District which was originally delineated for acquisition under s 47 of the Land Code (Sarawak Cap 81) for the proposed Sibu Twin Town — to be excluded from the proposed Sibu Twin Town and that he had thereby procured preferential treatment for himself and/or those close to him to their own financial advantage and interests;
- D (b) that he had used and abused his office position and influence as a politician and Assistant Minister for Environment and Housing not only to exclude Lot 1395 Seduan Land District from the Master Plan of the proposed Sibu Twin Town but to have its boundary along the borders of Lot 1395 Seduan Land District so that Lot 1395 Seduan Land District would appreciate in value immensely after completion of the proposed Sibu Twin Town in order that he would reap some huge profits from his own selfish acts — literally looting a burning house;
- E (c) that in order to get Lot 1395 Seduan Land District to be excluded from the Master Plan of the proposed Sibu Twin Town he had selfishly used and abused his office position and influence as a politician and Assistant Minister for Environment and Housing to include or caused to be included many other parcels of land, which were initially not affected nor delineated under s 47 of the Land Code for the proposed Sibu Twin Town, to be affected and delineated under s 47 so that they become included in the Master Plan of the proposed Sibu Twin Town and thereby causing unhappiness, agony and financial disadvantages to other people;
- F (d) that he together with a few politicians of the Sarawak United People's Party who have been elected as members of the Dewan Undangan Negeri Sarawak had conspired and abused their office, position and influence as politicians, elected representatives, Minister and Assistant Minister to get Lot 1395 to be excluded from the Master Plan of the proposed Sibu Twin Town and had thereby procured preferential treatment for themselves and/or those close to them to their own financial advantages and interests and as a result had caused unhappiness, agony and financial disadvantages to other people;
- H (e) that the motives of the plaintiff together with a few politicians of the Sarawak United People's Party were to get themselves elected into government in order to serve their own selfish ends and for their own financial advantages and benefits to the detriment and disadvantages of the masses;
- I (f) that he was guilty of corruption;

- (g) that he is unfit to be a politician, the Chairman of Sarikei Branch, the Treasurer of the Sarawak United People's Party and Assistant Minister for Environment and Housing; and A
- (h) that he is a liar and a dishonest and self-serving person and politician who only looks after his own financial interests and/or those close to him. B

I am of the view that the charges in para 8(a), (b), (c) and (d) of the statement of claim can be considered to be specific charges. And the charges in para 8(e)–(h) are general charges. B

TK Tobin and MG Sexton in *Australian Defamation Law and Practice* para 11,060 (p 7583) say: C

If the plaintiff relies on an imputation couched in general terms, for example, that he has engaged in fraud, it is open to the defendant to justify this charge by reference to specific instances of fraudulent conduct, whether or not those instances are referred to in the matter complained of and whether or not they had occurred at the time of publication. C

And at p 7584, the learned authors say: D

There is no principle which prevents the defendant from relying upon acts occurring prior to publication.

The particulars pleaded in para 14A are acts occurring prior to the publication of the pamphlet and therefore the defendants can rely on them. E

Gateley on Libel and Slander at pp 447–448 para 1076 says, quoting *Maisel v Financial Times Ltd (No 1)* (1915) 84 LJKB 2145: E

It was held by the House of Lords that in as much as the construction which the plaintiff had placed upon the libel the defendants were sued for charging generally that the plaintiff was unfit to be a director of any company, they were entitled to give particulars to show why they said that he was an unfit person to be a director. F

In view of the construction which the plaintiff has placed upon the libel, the defendants are entitled to give particulars to show the unfitness, corrupt abuse of office, etc of the plaintiff. G

In *Lucas-Box v News Group Newspapers Ltd* [1986] 1 All ER 177, his Lordship Ackner LJ at p 183 said: G

... a defendant who is relying on a plea of justification must make it clear to the plaintiff what is the case which he is seeking to set up. The particulars themselves may make this quite clear, but if they are ambiguous then the situation must be made unequivocal. H

The averments in the proposed amendments in para 14A of the defence are the same as those which have already been pleaded in para 13 of the defence.

I shall next deal with the oral application for amendment. I

In the Supreme Court Practice 1995 Vol 1 para 20/5-8/4 states:

It is desirable to specify the intended amendments (see *Lawrence v Norreys* (1890) 39 Ch D 213 at p 217, *Derrick v Williams* (1939) 55 TLR 676) either

A by stating them (if short) in the body of the summons or notice, or by referring to them, eg 'as set forth in red ink in the pleading annexed' or 'copy documents served herewith'. An affidavit is not required, as a rule, except in cases of amendment of a writ issued for service out of the jurisdiction (see *Holland v Leslie* (1894) 2 QB 346 at pp 348 and 450 and O 11 r 4).

B So an affidavit is not required for the proposed oral amendments.

I am of the view that the proposed amendment in the summons in chambers and the oral application for the proposed amendments arises out of the same facts or substantially the same facts as pleaded in the defence.

C In *Lucas-Box v News Group Newspapers Ltd*, his Lordship Ackner LJ at p 183 said:

Apart therefore from the surgery which we have administered to these particulars, we have ordered that, as a term of the grant of leave to amend, the following additional paragraphs, as drafted by the defendants, be inserted respectively in the *News of the World* and the *Daily Mail* particulars: ...

D I thus allow the oral application for amendment to para 13 as proposed and also the new para 14AA.

I shall deal with the contention of the plaintiff that the proposed amendments are not material and futile and therefore the court should not allow the proposed amendments.

E I am of the view that is prejudging the issue. At this stage of the proceedings, the court is not concerned with the merit of the defendants' case. The issue is whether to allow the proposed amendments or not.

F I now turn to the contention of the plaintiff that the particulars given in substantiation of the plea of justification did not go to the sting of the alleged libel, namely, that the plaintiff together with others had used and abused his office position and influence as a politician and a member of the Dewan Undangan Negeri Sarawak to procure preferential treatment for himself in relation to Lot 1395 Seduan Land District. The case of *Lee Kuan Yew v Devan Nair* [1990] 3 MLJ 452 was cited.

G I am of the view that the defendants have set out sufficient particulars to the plea of justification.

H The scope of the defence of justification should not depend upon the way in which the plaintiff pleaded his case, but on the meanings which the words published are capable of bearing: per Purchas LJ in *Prager v Times Newspapers Ltd* [1988] 1 All ER 300 at p 307.

It is true that the defendants have relied upon substantially the same facts as those used for fair comment to support the plea of justification. I am unable to see how that is improper. The defendants are relying on those particulars to ask the court to make certain inferences.

I Whether those inferences should, or should not, be made will be a matter which the trial judge will eventually have to decide. I do not think it would be appropriate for me at this stage to say anything more.

Further, the plaintiff contended that the defendants did not give the meaning of the alleged libel. I reject this contention as the defendants are not obliged to plead specifically any meaning for which they contend.

For in *Prager v Times Newspapers Ltd*, Purchas LJ at p 307 said:

At the risk of adding confusion to clarity, in my judgment it is still open to a defendant to plead so as to justify any reasonable meaning of the words published which a jury, properly directed, might find to be the real meaning. In doing this, he does not have to identify the precise meaning for which he contends; but he must make clear to the plaintiff what case he proposes to make in precise detail. This may well, and in most cases probably will, disclose one or more meanings of the words which he is prepared to justify; but he is not obliged to plead specifically any meaning for which he contends.

I am of the view that the proposed amendments in paras 14A, 14AA and 14B arise out of the same facts or substantially the same facts as has been pleaded in the defence. Even if limitation applies, I would allow the proposed amendments in paras 14A, 14AA and 14B of the defence for in *Hock Hua Bank Bhd v Leong Yew Chin* [1987] 1 MLJ 230 at p 232 his Lordship Abdul Hamid Ag LP (as he then was) said:

It is also clear from the established principle that the court has power to grant an amendment after the expiry of the limitation period notwithstanding that the effect of the amendment will be to add or substitute a new cause of action subject to one very important condition, namely, that the new cause of action must arise out of the same or substantially the same facts as the cause of action in respect of which relief had already been claimed.

Further, I am of the view that to allow the proposed amendments in this case would not cause any prejudice to the plaintiff which could not be compensated in money. No prejudice which cannot be compensated by costs has been shown.

In view of the foregoing, I allow the application for leave to amend the proposed defence in paras 13, 14A, 14AA and 14B of the defence.

The costs of this application should be paid by the defendants to the plaintiff in any event. The plaintiff is given liberty to make such amendments as may be necessary to meet the defendants' case as disclosed in the amended defence within 30 days of the receipt of the amended statement of defence.

For the reasons as stated above I also allow the application to amend paras 15, 16A, 16AA and 16B of the defence in Suit No 20-22-41-96. The costs of the application in Suit No 20-22-41-96 shall be paid by the defendants to the plaintiffs in any event. The plaintiffs are given liberty to make such amendments as may be necessary to meet the defendants' case as disclosed in the amended defence within 30 days of the receipt of the amended statement of defence.

Order accordingly.

Reported by Lew Chee Seong